

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8018 OF 2006

Mohd. Habib Khan

...Petitioner

vs.

Dilersingh Ajmani and Anr.

...Respondents

Mr.V.R.Tripathi for the Petitioner

CORAM: A.S.OKA, J.
DATE : FEBRUARY 20, 2007.

P.C.:

1. By this Writ Petition under Article 227 of Constitution of India, the Petitioner has taken exception to the Judgment and Order dated 31st October 2006 passed by the learned Judge of City Civil Court, Bombay.

2. The Petitioner is the original Plaintiff. The Petitioner claims to be the owner of a taxi. A suit was filed by the Petitioner for declaration that the Respondents-original Defendants are not entitled to seize the said vehicle without following due process of law and for perpetual injunction restraining the Respondents from seizing the vehicle without following due process of law. By the impugned order the learned Trial Judge held that the valuation of the suit made by the Petitioner under section 6 (iv) (j) of the Court Bombay Court Fees Act, 1959 is not proper and the suit ought to have been valued as per clause (iii) of section 6 of the said Act

of 1959. The learned Trial Judge held that even according to the case of the Appellant, the value of the vehicle in question on the date of institution of the suit was Rs.60,000/-.

3. The learned Counsel for the Petitioner submitted that in view of the decision of this court in case of Art Commercial Advertising Pvt.Ltd. Vs. Vicco Laboratories (A.I.R. 1990 Bombay page 123), the suit will be governed by section 6 (iv) (j) of the said Act of 1959 and therefore, the learned Trial Judge has committed an error.

4. I have considered the submissions. Section 6 (iv) (j) is a residuary provision which applies to a suit for declaration to which no other provision of Bombay Court Fees Act, 1959 is applicable. Clause (iii) of section 6 of the said Act of 1959 provides that in a suit for moveable property other than money, where the subject matter of the suit has a market value the same will have to be valued for the purpose of Court fees according to such value at the date of presentation of the plaint. In the present case, subject matter of the suit is moveable property being a vehicle. Even according to the case of the Appellant, on the date of institution of the suit, the vehicle had a market value equivalent to Rs.60,000/-. Thus, the learned Trial Judge has rightly held that clause (iii) of section 6 of the said Act of 1959 will govern the suit and not

the clause (iv) (j) section 6 of the said Act of 1959.

5. It must be stated here that by order dated 14th July 2006, the same view was taken by the learned Trial Judge by holding that prayer clause (a) of the suit will have to be valued at Rs.60,000/-. The said order was challenged by the Petitioner by filing a Writ Petition which was disposed of by order dated 13th September 2006. In view of the said order, the Petitioner applied for deletion of the prayer clause (a). By passing the impugned order, the learned Trial Judge has considered the matter afresh after deletion of prayer clause (a).

6. After deletion of prayer clause (a), only prayer which survives is a prayer for perpetual injunction. It is obvious that the said prayer will not be governed by section 6 (iv)(j) of the said Act of 1959 and the same will be governed by section 6(iii) of the said Act of 1959.

7. There is no error in the impugned order. Petition is rejected.

8. However, time to comply with the impugned order is extended till 25th April 2007.

JUDGE